Supreme Court, U.S.
FILED

001890 JUN 19 2001

OFFICE OF THE CLERK

(1)

In The

Supreme Court of the United States

BOUNTHAVY YAEK YASA,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeal Of California

PETITION FOR A WRIT OF CERTIORARI

JONATHAN B. STEINER
Counsel of Record
Executive Director
(State Bar No. 48734)

CALIFORNIA APPELLATE PROJECT
520 South Grand Ave., 4th Floor
Los Angeles, CA 90071
Telephone: (213) 243-0300

Counsel for Petitioner

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

27 pp

QUESTION PRESENTED

When an officer pulls his patrol car in front of a parked car in such a way as to prevent the car from being driven away has the driver been detained so that the reasonable suspicion standard for an investigative stop conducted pursuant to *Terry v. Ohio*, 392 U.S. 1, 20 L.Ed.2d 889, 88 S.Ct. 1868 (1968) must be satisfied?

TABLE OF CONTENTS

Page

PETITION FOR WRIT OF CERTIORARI 1

OPINION BELOW 1

JURISDICTION 1

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 2

STATEMENT OF FACTS 2

HOW THE FEDERAL QUESTION WAS PRESENTED AND DECIDED BELOW 3

REASONS FOR GRANTING THE WRIT 5

A. Contrary State And Federal Authority Indicates Petitioner Was Detained At The Moment The Officers Pulled Their Vehicle In Front Of Petitioner's Car In Such A Manner As To Prevent Him From Driving Away 6

B. The Mandates Of *Terry* Were Not Satisfied ... 8

C. Petitioner's Consent Was Invalid 9

APPENDIX

OPINION A-1

PETITION FOR REVIEW DENIED A-10

PETITION FOR REHEARING DENIED A-11

CONSTITUTIONAL PROVISIONS INVOLVED ... A-12

RELEVANT CALIFORNIA VEHICLE CODE SECTION A-12

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Adams v. Williams, 407 U.S. 143, 32 L.Ed.2d 612, 92 S.Ct. 1921 (1972) 8

Florida v. Royer, 460 U.S. 491, 75 L.Ed.2d 229, 103 S.Ct. 1319 (1983) 5, 8, 9

Terry v. Ohio 392 U.S. 1, 20 L.Ed.2d 889, 88 S.Ct. 1868 (1968) ..... i, 4, 5, 7, 8, 9

United States v. Cormier, 220 F.3d 1103 (9th Cir. 2000) 9

United States v. Kerr, 817 F.2d 138 (9th Cir. 1987) ...5, 7

United States v. Mendenhall, 446 U.S. 544, 64 L.Ed.2d 497, 100 S.Ct. 1870 (1980) 6, 8

United States v. Mota, 582 F.2d 1384 (9th Cir. 1993) 9

United States v. Thomas, 844 F.2d 678 (9th Cir. 1988) 7

United States v. Watson, 423 U.S. 411, 46 L.Ed.2d 598, 96 S.Ct. 820 (1974) 9

Wong Sun v. United States, 371 U.S. 471, 9 L.Ed.2d 441, 83 S.Ct. 407 (1963) 9

CALIFORNIA CASES

In re Eskiel S., 15 Cal.App.4th 1638 (1993) 6

People v. Bailey, 176 Cal.App.3d 402 (1985) 5, 7

People v. Franklin, 192 Cal.App.3d 935 (1987) 7

People v. Gallant, 225 Cal.App.3d 200 (1990) 9

People v. Leib, 16 Cal.3d 869 (1976) 9

TABLE OF AUTHORITIES – Continued

Page

People v. Perez, 211 Cal.App.3d 1492 (1989) 7

People v. Wilkins, 186 Cal.App.3d 804 (1986) 4, 7

CONSTITUTION

United States Constitution

Fourth Amendment 1, 2, 6, 8, 9

Fourteenth Amendment 1

RULE

United States Supreme Court Rules of Court

Rule 10.1 5

STATUTES

Health and Safety Code section:

11378 2

Penal Code sections:

138.5 2

148 6

1170.12 2

12021 2

12022 2

12090 2

Vehicle Code section:

22514 .....2, 3, 4, 8

PETITION FOR WRIT OF CERTIORARI

Petitioner, Bounthavy Yasa, respectfully prays that a writ of certiorari issue to review the decision of the Court of Appeal of California affirming his judgment of conviction.

OPINION BELOW

The unreported judgment of the California Court of Appeal was rendered on February 13, 2001, affirming petitioner's conviction, and is reproduced in the Appendix hereto, pages A2 through A8. A petition for rehearing was timely filed and denied on March 7, 2001. A copy of the denial order appears at page A9. A petition for review to the California Supreme Court was timely filed and denied on April 18, 2001. A copy of the denial order appears at page A10.

JURISDICTION

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1257(a).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Fourth and Fourteenth Amendments and California Vehicle Code section 22514 are set forth in full in Appendix page A1.

STATEMENT OF THE CASE

An information charged Bounthavy Yasa with possession for sale of a controlled substance in violation of California Health and Safety Code section 11378; obliterating the identification of a firearm in violation of Penal Code section 12090; and being a felon in possession of a firearm in violation of Penal Code section 12021, subdivision (a)(1). As to the first count, it was also alleged Yasa was personally armed within the meaning of Penal Code section 12022, subdivision (c). The information further alleged Yasa had previously been convicted of a serious or violent felony (a strike) within the meaning of Penal Code sections 667, subdivisions (b) through (i) and 1170.12, subdivisions (a) through (d).

In accordance with the procedures laid out in Penal Code section 138.5, Yasa moved to suppress the evidence against him as being obtained in violation of the search and seizure clause of the Fourth Amendment. The Superior Court denied the motion. Yasa then waived his constitutional rights, pled no contest to possession of a controlled substance and admitted personally using a firearm and suffering the alleged strike. Pursuant to the plea bargain agreement, the court sentenced Yasa to four years.

STATEMENT OF FACTS

Pomona Police Officer Bebon Joseph testified that when he stopped to investigate whether petitioner was illegally parked in front of a fire hydrant in violation of Vehicle Code section 22514, he parked his vehicle in such

a way as to prevent petitioner from leaving the scene by driving forward. Further, when Joseph and his partner, Officer Sprague, exited the car they ordered everyone to remain where they were and to put their hands in the air. Finally, the officers directed two people who tried to leave to return to the car. Before the two complied, one dropped what appeared to be a controlled substance. (Appendix p. 4.) Officer Sprague then told the occupants of petitioner's car to put their hands up. While they all complied, petitioner kept putting his hands down into his waistband and had to be repeatedly told to put his hands on the steering wheel. Officer Joseph noticed petitioner had an open container of beer between his legs. Sprague had petitioner exit the vehicle. Sprague asked petitioner for permission to pat him down and petitioner consented. As a result of a subsequent search of petitioner and the car, the officers found a loaded nine-millimeter handgun and several baggies of methamphetamine. (Appendix p. 5.)

HOW THE FEDERAL QUESTION WAS PRESENTED AND DECIDED BELOW

In the Superior Court, Yasa moved to suppress the firearm and narcotics discovered as a result of the warrantless search of his person and vehicle by Pomona police officers. The court denied the motion because it found the officers had an objectively reasonable basis for detaining appellant; i.e., that petitioner was illegally parked in front of a fire hydrant within the meaning of Vehicle Code section 22514. (Appendix p. 6.)

On appeal, petitioner challenged the constitutionality of the warrantless search of his person and car. Specifically, petitioner argued that the arresting officer lacked the reasonable suspicion necessary to detain him for parking in front of a fire hydrant because he was not parked in violation of the Vehicle Code.[1] In affirming petitioner's conviction, the Court of Appeal found that Yasa had not been detained at the point the officers pulled their vehicle in front of his parked car, and, therefore, they did not need reasonable suspicion to do so. The court further found that Yasa had not been detained until after two of the people standing around his car tried to flee and one of them dropped what appeared to be a controlled substance upon being ordered back to the car. Since, at that point, the officers had reasonable suspicion to detain everyone at the scene for possession of narcotics, the detention did not violate the mandates of *Terry v. Ohio*. (Appendix pp. 4, 6-7.)

Petitioner filed a petition for rehearing because the parties had not briefed the issue of whether or not petitioner was detained at the moment the police pulled in front of him. The parties had assumed that he was so detained and argued about the validity of that detention. In the petition for rehearing, petitioner pointed out several California and Ninth Circuit cases indicating petitioner had indeed been detained the moment the police pulled up in such a manner. (See e.g., *People v. Wilkins*,

---

[1] Specifically, petitioner argued that he fell within exception (a) to section 22514 in that he was sitting in the car at the time of the stop and, therefore, the officers could not have issued a citation.

186 Cal.App.3d 804, 809 (1986)) [occupants of the car were "seized" at the moment the officer stopped his patrol car behind the parked car preventing that car from exiting the parking lot]; *People v. Bailey*, 176 Cal.App.3d 402, 404 (1985) [a detention occurred once the officer in an unmarked car pulled in behind defendant's parked vehicle and turned on the patrol car's emergency lights]; *United States v. Kerr*, 817 F.2d 1384, 1386-1387 (9th Cir. 1987) [defendant was detained the moment the deputy pulled into and blocked the one lane driveway as defendant was backing out.) Nevertheless, the court summarily denied his petition for rehearing, as did the California Supreme Court deny his petition for review. (Appendix pp. A9-A10.)

REASONS FOR GRANTING THE WRIT

Certiorari should be granted because this case presents an issue to which Rule 10.1 (c) applies; i.e., the California Court of Appeal decided an important question of federal constitutional law which has not been, but should be, settled by this Court, namely: Whether a person is detained, within the meaning of *Terry v. Ohio*, at the moment police position their car in such a manner as to prevent the person from driving away.

This Court should grant the writ so it can announce a workable, uniform definition of when a person is detained so that both the officer in the field as well as the everyday citizen knows when a person is free to avoid a consensual encounter with police (see *Florida v. Royer*, 460 U.S. 491, 497-498, 75 L.Ed.2d 229, 103 S.Ct. 1319 (1983)),

and when a reasonable person should believe he is not free to leave within the meaning of the Fourth Amendment. (See *United States v. Mendenhall*, 446 U.S. 544, 554, 64 L.Ed.2d 497, 100 S.Ct. 1870 (1980); see also *In re Eskiel S.*, 15 Cal.App.4th 1638, 1644 (1993) [a person does not violate California Penal Code section 148, which prohibits resisting arrest, if he walks away from an unlawful police detention].) The right to avoid a consensual police encounter is a hollow one if neither the average citizen nor the average police officer knows exactly when a consensual encounter escalates into a detention.

A. Contrary State And Federal Authority Indicates Petitioner Was Detained At The Moment The Officers Pulled Their Vehicle In Front Of Petitioner's Car In Such A Manner As To Prevent Him From Driving Away.

According to the Court of Appeal, petitioner was not detained when the police initially parked in such a way as to prevent petitioner from driving away. Rather, according to the Court of Appeal, the detention began when the two people who fled returned as ordered and the officers directed everyone to put their hands up. (Appendix pp. 6-7.) Again, a person is "detained" within the meaning of the Fourth Amendment if a reasonable person in that situation would believe he was not free to leave. (*United States v. Mendenhall, supra*, 446 U.S. at p. 554.) The detention in this case was never a voluntary encounter. Voluntariness presupposes a freedom of choice that petitioner did not have. The two individuals who started to walk away certainly did not have that choice. No reasonable person in petitioner's position would

believe he or she was free to leave at that point either. Several state and federal Court of Appeal opinions indicate petitioner was detained the moment Officer Bebon pulled in front of petitioner's car in such a manner as to prevent petitioner from driving forward. (See *People v. Wilkins, supra,* 186 Cal.App.3d at p. 809 [occupants of the car were "seized" at the moment the officer stopped his patrol car behind the parked car preventing that car from exiting the parking lot]; *People v. Bailey, supra,* 176 Cal.App.3d at p. 404 [a detention occurred once the officer in an unmarked car pulled in behind defendant's parked vehicle and turned on the patrol car's emergency lights]; *People v. Perez,* 211 Cal.App.3d 1492, 1496 (1989)[no detention because officer did not park his vehicle in such a way so as to prevent the defendant from driving off]; *People v. Franklin,* 192 Cal.App.3d 935, 940 (1987)[no detention because defendant's vehicle was not blocked from leaving]; *United States v. Kerr, supra,* 817 F.2d at pp. 1386-1387 [defendant was detained the moment the deputy pulled into and blocked the one lane driveway as defendant was backing out]; *United States v. Thomas,* 844 F.2d 678, 684 (9th Cir. 1988) [followed *Kerr*].) These cases, as well as common sense, indicate petitioner was detained from the moment the officers pulled in front of his vehicle.

Even if petitioner was not detained, within the meaning of *Terry v. Ohio,* at the precise moment the officers pulled up, he certainly was as soon as the officers directed the two people walking away to stop and return to the car. From that moment it was crystal clear to everyone at the scene that no one was free to leave. Since a person has the right to walk away from a voluntary or

consensual police encounter (*Florida v. Royer, supra,* 460 U.S. at p. 498) and petitioner clearly could not do so at this point, this was not such an encounter but rather a detention within the meaning of the Fourth Amendment. (*United States v. Mendenhall, supra,* 446 U.S. at p. 554.)

B. The Mandates Of *Terry* Were Not Satisfied.

Under *Terry,* a police officer may temporarily detain a citizen if the officer has knowledge of specific and articulable facts which cause him to suspect that (1) some criminal activity has taken place or is occurring or is about to occur, and (2) the person he intends to stop or detain is involved in that activity. (*Terry v. Ohio, supra,* 392 U.S. at p. 21.) The state bears the burden of justifying such a detention. (*Id.,* at p. 20; *Adams v. Williams,* 407 U.S. 143, 32 L.Ed.2d 612, 92 S.Ct. 1921 (1972).) The only proffered justification for initially detaining petitioner was that his car was parked within fifteen feet of a fire hydrant, in violation of California Vehicle Code section 22514. This was not a valid basis for a detention because, as the Court of Appeal found, the officers had no objective reason to believe he was parked in violation of the Vehicle Code.[2] (Appendix p. 6.) Because petitioner had not violated section 22514, he could not legally be

---

[2] Officer Joseph's testimony unequivocally established petitioner was sitting in the driver's seat of the car at the time he aggressively pulled in front of petitioner's vehicle, blocking him from driving off. Since petitioner clearly fell within the exception of Vehicle Code section 22514, subdivision (a), the officers objectively lacked reasonable suspicion that he had violated or was violating the prohibition against parking in front of a fire hydrant. (Appendix p. 3.)

detained under *Terry*; i.e., the deputies could not detain petitioner because they could not possibly have had a reasonable suspicion he was parked in violation of the Vehicle Code. (See e.g., *United States v. Watson*, 423 U.S. 411, 420, fn. 8, 46 L.Ed.2d 598, 96 S.Ct. 820 (1974); *People v. Leib*, 16 Cal.3d 869, 875 (1976); *United States v. Mota*, 582 F.2d 1384 (9th Cir. 1993); *United States v. Cormier*, 220 F.3d 1103, 1101 (9th Cir. 2000) [an arrest which is unlawful under the state law which it was purported to have been made is unconstitutional].)

C. Petitioner's Consent Was Invalid.

Finally, petitioner's subsequent consent to the search of his person and car did not allow the evidence to be admitted under the consent exception to the Fourth Amendment's warrant requirement. A defendant's consent to search is invalid if prior to that consent being given he was subject to an unlawful assertion of authority, such as an illegal arrest or detention. (*Florida v. Royer, supra*, 460 U.S. at pp. 497-498.) In such a case, the consent simply "cannot be segregated from the illegal assertion of authority." (*People v. Gallant*, 225 Cal.App.3d 200, 211 (1990).) Here, petitioner clearly consented to the patdown search well after he was illegally detained. As such, the firearm and the narcotics discovered as a result should have been suppressed as fruit of the poisonous tree. (*Wong Sun v. United States*, 371 U.S. 471, 483-488, 9 L.Ed.2d 441, 83 S.Ct. 407 (1963).) Since the Court of Appeal erroneously affirmed the denial of petitioner's motion to suppress and, in so doing, caused further confusion as to what constitutes a detention, petitioner

respectfully requests this Court grant a writ of certiorari petition for review in order that it may enunciate a uniform test of what constitutes a detention.

WHEREFORE, petitioner prays for a writ of certiorari, to issue to the Court of Appeal of California.

Dated this 18th day of June, 2001, at Los Angeles, California.

Respectfully submitted,

JONATHAN B. STEINER
Executive Director

CALIFORNIA APPELLATE PROJECT
520 South Grand Avenue
4th Floor
Los Angeles, California 90071

Attorneys for Petitioner

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. BOUNTHAVY YAEK YASA, Defendant and Appellant.	B141736 (Super. Ct. No. KA047164) (Filed Feb. 13, 2001)

APPEAL from a judgment of the Superior Court of Los Angeles County. Dan Thomas Oki, Judge. Affirmed.

Richard L. Fitzer, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, David P. Druliner, Chief Assistant Attorney General, Carol Wendelin Pollack, Senior Assistant Attorney General, Robert F. Katz, Supervising Deputy Attorney General, and G. Tracey Letteau, Deputy Attorney General, for Plaintiff and Respondent.

Bounthavy Yaek Yasa negotiated a no contest plea to possessing methamphetamine for sale, with his admission he was armed with a firearm during the commission

of the offense.[1] He admitted he had a prior conviction qualifying him for sentencing as a second-strike offender under the "Three Strikes" law.[2] Before his plea, the court denied his motion to suppress illegally-seized evidence.[3] He filed a notice of appeal. On appeal he contends the officers had no reasonable cause to detain him pursuant to *Terry v. Ohio*.[4]

FACTS

At 9:35 p.m. on January 14, 2000, Pomona Police Officers Andrew Bebon and Richard Sprague were on patrol. They were assigned to the major crimes task force. Bebon was a 12-year veteran officer and had special training regarding Asian gangs. Sprague was a 9-year veteran officer who had special training as to gangs and narcotics.

The officers observed appellant sitting in the driver's seat of a red Nisson 240SX parked within 10 to 12 feet of a fire hydrant.[5] There were three other occupants in the

---

[1] Health & Saf. Code, § 11378; Pen. Code, § 12022, subd. (c).

[2] Pen. Code, §§ 667, subds. (b) to (i); 1170.12.

[3] Pen. Code, § 1538.5.

[4] (1968) 392 U.S. 1.

[5] Vehicle Code section 22514, concerning fire hydrants, states: "No person shall stop, park, or leave standing any vehicle within 15 feet of a fire hydrant except as follows:

"(a) If the vehicle is attended by a licensed driver who is seated in the front seat and who can immediately move vehicle in case of necessity.

"(b) If the local authority adopts an ordinance or resolution reducing that distance. If the distance is

Nissan and six youths standing on the street near the Nissan. The apartment building where the car was parked was a known Asian gang hangout. The block was also known for marijuana sales and gang activity. Sprague testified he concluded the youths in the Nissan were Asian gang members due to their appearance. Bebon claimed the officers relied in part upon a violation of Vehicle Code section 22514 in detaining appellant. They also stopped to discover "what all the people were doing."

Bebon pulled the police car in front of the Nissan at an angle, effectively preventing the Nissan from pulling away forward. Two youths fled. The officers got out of their car and yelled for the two youths to remain there. One of the fleeing youths stopped. The other walked on, dropped something, then returned to the officers. As Bebon was attempting to detain the two fleeing youths, he walked past appellant. Bebon looked through the driver's window of the Nissan and observed appellant had a large, open can of beer sitting between his legs.[6]

---

less than 10 feet total length when measured along the curb or edge of the street, the distance shall be indicated by signs or markings.

"(c) If the vehicle is owned or operated by a fire department and is clearly marked as a fire department vehicle."

[6] Vehicle Code section 23221, concerning drinking in motor vehicle upon highway, provides:

"(a) No driver shall drink any alcoholic beverage while in a motor vehicle upon a highway.

Sprague ordered all the youths present to put their hands where the officers could see them. Bebon testified he patted down the pedestrians. Bebon explained he believed they were dealing with gang youths. Bebon said he did not want to get shot in the back of the head while contacting the two youths who fled.

Sprague watched the Nissan's occupants while Bebon conducted the patdown of the pedestrians. Appellant kept putting his hands in his lap area. Sprague instructed appellant three or four times to put his hands on the steering wheel.

"(b) No passenger shall drink any alcoholic beverage while in a motor vehicle upon a highway."

Vehicle Code section 23223, concerning possessing an opened container in a motor vehicle, provides:

"(a) No driver shall have in his or her possession, while in a motor vehicle upon a highway or on lands, as described in subdivision (b) of Section 23220, any bottle, can, or other receptacle, containing any alcoholic beverage that has been opened, or a seal broken, or the contents of which have been partially removed.

"(b) No passenger shall have in his or her possession, while in a motor vehicle upon a highway or on lands, as described in subdivision (b) of Section 23220, any bottle, can, or other receptacle containing any alcoholic beverage that has been opened or a seal broken, or the contents of which have been partially removed."

Vehicle Code sections 23224 and 23225 also prohibit appellant's possession of the open beer can in the passenger compartment of his Nissan.

Bebon had the six pedestrians sit on the curb. The officer picked up the item dropped. It was a baggie of marijuana. No one was arrested for the contraband.

Sprague had appellant step out of the Nissan. Sprague concluded it was unusual for appellant to disregard the officers' directions by repeatedly reaching into his lap. Sprague had appellant step out of the car for officer safety and asked for appellant's consent for a patdown. Appellant replied yes. Sprague never saw the open beer can.

During the patdown, Sprague told Bebon appellant mentioned he had a firearm in the Nissan. Bebon drew his handgun at that point.[7]

In defense, Appy Chittham testified the officers drove up on the youths suddenly without lights. The officers parked their car and jumped out with guns drawn. The youths were of mixed ethnicity and were

---

[7] The People did not elicit testimony regarding what happened thereafter, or as to what the officers recovered from appellant. However, the probation report indicates appellant told the officer he had a firearm inside the Nissan. The officers found a loaded nine-millimeter handgun under the driver's seat. On appellant's person, Sprague found several baggies of methamphetamine with an aggregate weight of .60 grams. There was an electronic paging device and a cellular telephone inside the Nissan. In a shirt pocket, appellant had a glass narcotic smoking pipe. Appellant was placed under arrest. He told the officers the firearm was his and he was a member of the "Dangerous Nips," an Asian gang. Appellant told the officers he was using methamphetamines. He told the officers, occasionally, he sold small amounts of methamphetamine to his friends for cash.

dressed normally. A White youth and an Asian couple were in appellant's car with him.

Susan Hoang testified appellant was there to pick her up after work. She worked at the supermarket on the corner. She had just entered the car when the police drove up. Hoang corroborated the officers drove up suddenly without lights and drew their guns and detained everyone on the corner.

Richard Sneed testified he was a passenger in appellant's car. Appellant had picked him up from work 30 minutes earlier and Sneed was wearing his work clothes. The officers searched everyone at gunpoint who was standing outside the car. Then they ordered him out of the car. Sneed and appellant were drinking beer.

The court commented the officers testified they wanted to stop and see what the youths were doing. The court said "it was clearly a pretextual detention," but a pretext stop is permitted under the Fourth Amendment. There was uncontradicted testimony appellant parked his car within 15 feet of a fire hydrant, a violation of the Vehicle Code. Then the officers observed appellant had an open beer can in the Nissan, which constituted several violations of the Vehicle Code. The Vehicle Code violations gave the officers reason to prolong the detention. Appellant consented to the patdown search. The court stated there were some discrepancies in the officers' testimony and between the officers' testimony and that of the defense witnesses. The court concluded the stop and appellant's patdown were justified.

The court denied the defense motion to suppress illegally-seized evidence obtained as a result of the detention.

DISCUSSION

We reject the contention the record fails to contain adequate justification for a valid detention. Appellant was not in violation of the Vehicle Code regarding parking near a fire hydrant. He occupied the Nissan and was present to move the Nissan, if requested. However, it was after 9:00 p.m. at night. The officers saw a number of Asian gang youths standing around an occupied Nissan in a gang area outside a supermarket. When the officers stopped their car, before any detention was effected, two youths ran and one dropped an item which later was discovered to be a baggie containing marijuana. The offices yelled at the two fleeing youths to stop and the youths complied. Then the officers ordered everyone present to put their hands in sight. Only upon the latter order was appellant detained.[8]

The officers initially detained the two fleeing youths, one of whom dropped an item to the ground. After the youth dropped the item, the officers were justified in believing the youths were in possession of controlled substances and detaining them all.[9]

---

[8] *California v. Hodari D.* (1991) 499 U.S. 621, 626-629.

[9] *People v. Souza* (1994) 9 Cal.4th 224, 228-242; see also, *Whren v. United States* (1996) 517 U.S. 806, 813; *California v. Hodari D., supra,* 499 U.S. at pp. 626-629.

Before the officers could investigate the possession of illicit narcotics, they were concerned for their safety. They had reason to conclude they were detaining gang youths due to the area of the detention. It is not uncommon for gang youths to be armed with firearms. It was dark in the area and late in the evening. So initially Bebon patted down the pedestrians before the officers turned their attention to the occupants of the Nissan.[10]

By that time, Bebon had observed appellant had an open container of an alcoholic beverage. That observation amply justified the officers in investigating the traffic violation and in ordering appellant out of the Nissan.[11] As he was getting out of the Nissan, appellant consented to a patdown search.[12]

On this record, the appellant's detention was justified and the court properly denied appellant's motion to suppress evidence.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

JOHNSON, J.

---

[10] *Terry v. Ohio, supra,* 392 U.S. at pp. 21-22.

[11] *Whren v. United States, supra,* 417 U.S. at p. 810; *Michigan v. Long* (1983) 463 U.S. 1032, 1047-1048; *Pennsylvania v. Mimms* (1977) 434 U.S. 106, 111.

[12] *People v. James* (1977) 19 Cal.3d 99, 106; see also *Schneckloth v. Bustamente* (1973) 412 U.S. 218, 219.

We concur:

LILLIE, P.J.

WOODS, J.

Court of Appeal, Second Appellate District,
Division Seven – No. B141736
S095957

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

BOUNTHAVY YAEK YASA, Defendant and Appellant.

(Filed Apr. 18, 2001)

Petition for review DENIED.

WERDEGAR

Acting Chief Justice

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

DIVISION 7

March 7, 2001

The People
vs.
Bounthavy Yaek Yasa

B141736
Los Angeles County No. KA047164

THE COURT:

Petition for rehearing is denied.

cc: All Counsel
File

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment IV of the Constitution of the United States provides, *inter alia* that:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment XIV provides:

> Sect. 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce an law which shall abridge the privileges or immunities of citizens of the United States: nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

RELEVANT CALIFORNIA VEHICLE CODE SECTION

§ 22514. Fire hydrants

No person shall stop, park, or leave standing any vehicle within 15 feet of a fire hydrant except as follows:

> (a) If the vehicle is attended by a license driver who is seated in the front seat and who can immediately move such vehicle in case of necessity.